

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 419 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

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VIRSANGJI MAGANJI THAKORE

Versus

KIRITKUMAR KANTILAL PATEL

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Appearance:

MS SONAL H PUJARA for Petitioner

MRS. BR GAJJAR, APP for Respondents 4 to 7

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/05/98

ORAL JUDGEMENT

Heard learned Advocate Ms. Sonal H. Pujara appearing for the petitioner. Rule. Learned APP Mrs. B.R. Gajjar waives service of rule on behalf of respondents No. 4 to 7.

2. The petitioner has approached this court with a prayer to issue writ and/or appropriate direction against respondent No.6 to take action against respondent No. 5 for not taking action against respondents No. 1 to 3 for

their criminal acts of trespassing, house trespassing and causing grievous hurt to the petitioner and his family members, etc. The petitioner has also prayed direction to respondents No.1 to 3 for payment of compensation in respect to harassment caused to the petitioner by respondents No. 4 to 6. The petitioner has further prayed a writ and/or direction against respondent No.7 to provide record of revenue entry of land bearing Survey No.700, Radhanpur Road, Mehsana and the entry showing the position of record on 31st December, 1997.

3. The petitioner has made averments in the petition that on 31st December, 1997 respondents No. 1 to 3 along with crowd of 150 people mounted an attack on the property of the petitioner where the petitioner and his family members were present. The respondents No 1 to 3 and their accomplice were holding deadly weapons in their hands and they have entered into the land of petitioner and they have inflicted injury. It is alleged by the petitioner that despite attempt made to lodge an FIR against respondents No.1 to 3 at Dediya Police Station, the police has refused to record the complaint and thereby the petitioner had approached the Mehsana Police Station. However, Mehsana Police has also refused to record any complaint. It is also alleged by the petitioner that respondents No.1 to 3 are having political influence and thereby police has not recorded any complaint given by the petitioner and as such the petitioner is constrained to approach this court. It may be noted that the incident in question had occurred as early as 31st December, 1997. That thereafter, the petitioner appears to have approached the Civil Court by filing a Civil Suit in the Court of Civil Judge (SD), Mehsana claiming declaration regarding actual possession of the petitioner and prohibitory injunction to restrain the respondents and his accomplice from entering into the suit land and to cause any obstruction in the enjoyment of the said property by the petitioner. Said suit appears to have been filed on 29th December, 1997. Learned Advocate appearing for the petitioner has stated at bar that petitioner has unconditionally withdrawn the said civil suit as no interim relief was granted in favour of the petitioner.

4. The averments made in the petition also disclose the fact that prior to December, 1997, respondents No. 1 to 3 had negotiated a deal in respect to sale of the disputed land and had paid some amount to the petitioner and thereafter on account of dispute regarding sale value of the said land, the relation of the parties are strained and as such petitioner has shown apprehension

that if relief as prayed in the petition is not granted, the petitioner's valuable rights would be violated.

5. On scrutiny of the contents of the petition and annexures produced with the petition, it is difficult to be satisfied that petitioner has a genuine apprehension to the danger of his life. The petitioner has failed to approach any criminal court for alleged criminal acts alleged to have been committed by respondents No. 1 to 3 though the petitioner had occasion to file a suit in the Civil Court. The petitioner having come to this court at belated stage for an incident which had occurred in December, 1997, in my opinion, this cannot be said to be a fit case for invoking extraordinary remedy provided under the Constitution.

6. On the above stated discussion, petition fails and stands disposed of as rejected. Rule is discharged. However, in view of the financial status of the petitioner, no order as to costs.

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